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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,618	03/14/2007	Amir Barnea	BARNEA1	2037
1444 7590 04/01/2008 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			EXAMINER PUENTE, EMERSON C	
			ART UNIT 2113	PAPER NUMBER
			MAIL DATE 04/01/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,618	<b>Applicant(s)</b> BARNEA ET AL.	
	<b>Examiner</b> Emerson C. Puente	<b>Art Unit</b> 2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 48-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 48-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/12/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This action is made Non-Final.

Claims 48-68 have been examined.

### ***Specification***

The specification is objected under 37 CFR 1.75 for failing to provide antecedent basis for claim terminology "computer readable medium" presented in claim 68 (see MPEP 608.01(o)).

The disclosure is objected to because of the following informalities:

Please change "between **a** multiple processors" to "between multiple processors" (see page 2 line 5).

Examiner notes the lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Appropriate correction is required.

### ***Claim Objections***

Claim 59 is objected to because of the following informalities

Please change "blasé server" to "blade server" (see line 4 of claim).

Please change "available one" to "available **on** one" (see line 10 of claim).

Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 67 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 67 discloses a computer program (see page 8 lines 30-31). Computer programs are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program’s functionality to be realized (See MPEP 2106).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 48-50,52-61, and 63-68 are rejected under 35 U.S.C. 102(a or e) as being anticipated by US Patent Application Publication 2003/0120772 of Husain et al. referred hereinafter "Husain".

Regarding claim 48,67, and 68, Husain discloses a method and computer program stored on a computer readable medium for controlling operation of at least one executable operating on a blade server while having access to a source snapshot of the at least one executable, the blade server including at least one blade, comprising:

selecting any available one of said at least one blade for loading an instance of a running snapshot associated with said source snapshot. Husain discloses replacing computer blade(s) (see page 5 paragraph 64 and page 6 paragraph 75). Husain further discloses providing snapshot copies or archives of the computer blades (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

loading the instance of the running snapshot to the available one of said at least one blade. Husain further discloses storing the backup information onto the replacement computer blade (see page 8 paragraph 93 and page 13 paragraph 141).

Regarding claim 49, Husain discloses the claim limitations as discussed above. Husain further discloses selecting the source snapshot from selectable snapshots, the selectable snapshots including at least one of one or more intermediate snapshots respective of each one of the at least one executable and an initial snapshot respective of each one of the at least one executable. Husain discloses selecting from a plurality of archives (see page 13 paragraphs 141-142).

Regarding claim 50, Husain discloses the claim limitations as discussed above. Husain further discloses wherein selecting includes selecting a blade whose available resources being substantially equal or greater than the resources required by the instance of the running snapshot. Husain further discloses selecting a computer blade with same functionality (see page 9 paragraph 99).

Regarding claim 52, Husain discloses the claim limitations as discussed above. Husain further discloses generating an intermediate snapshot from the running snapshot (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

Regarding claim 53, Husain discloses the claim limitations as discussed above. Husain further discloses storing the intermediate snapshot in a repository adapted to store one or more intermediate snapshots each generated from a respective running snapshot (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

Regarding claim 54, Husain discloses the claim limitations as discussed above. Husain further discloses instantiating the initial snapshot or one of the intermediate snapshots stored in the repository (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

Regarding claim 55, Husain discloses the claim limitations as discussed above. Husain further discloses wherein the running snapshot is the source snapshot (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

Regarding claim 56, Husain discloses the claim limitations as discussed above. Husain further discloses wherein the running snapshot is generated from the source snapshot (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

Regarding claim 57, Husain discloses the claim limitations as discussed above. Husain further discloses wherein the running snapshot is an intermediate snapshot stored in the repository (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

Regarding claim 58, Husain discloses the claim limitations as discussed above. Husain further discloses wherein the running snapshot is generated from an intermediate snapshot or from an initial snapshot stored in the repository (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

Regarding claim 59, Husain discloses a controlling apparatus for controlling operation of at least one executable operating on a blade server while having access to a source snapshot of the at least one executable, the blade server including at least one blade, the controlling apparatus comprising:

a blade selector for selecting an available one of said at least one blade for loading an instance of a running snapshot associated with said source snapshot. Husain discloses replacing computer blade(s) (see page 5 paragraph 64 and page 6 paragraph 75). Husain further discloses providing snapshot copies or archives of the computer blades (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

a snapshot loader for loading the instance of the running snapshot to be available one of said at least one blade. Husain further discloses storing the backup information onto the replacement computer blade (see page 8 paragraph 93 and page 13 paragraph 141).

Regarding claim 60, Husain discloses the claim limitations as discussed above. Husain further discloses a snapshot selector configured to select the source snapshot from selectable

snapshots, the selectable snapshots including at least one of one or more intermediate snapshots respective of each one of the at least one executable and an initial snapshot respective of each of the at least one executable. Husain discloses selecting from a plurality of archives (see page 13 paragraphs 141-142).

Regarding claim 61, Husain discloses the claim limitations as discussed above. Husain further discloses wherein the blade selector is configured to select a blade whose available resources being substantially equal or greater than the resources required by the instance of the running snapshot. Husain further discloses selecting a computer blade with same functionality (see page 9 paragraph 99).

Regarding claim 63, Husain discloses the claim limitations as discussed above. Husain further discloses a snapshot generator for generating an intermediate snapshot from the running snapshot (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

Regarding claim 64, Husain discloses the claim limitations as discussed above. Husain further discloses a repository configured to store one or more intermediate snapshots and one or more initial snapshots, each generated from a respective running snapshot and a storage processor coupled to said snapshot generator, the storage processor being configured to store the generated intermediate snapshot in the repository (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

Regarding claim 65, Husain discloses the claim limitations as discussed above. Husain further discloses an instance generator for instantiating initial snapshots or intermediate snapshots repository (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).



Regarding claim 66, Husain discloses the claim limitations as discussed above. Husain further discloses operable on any blade (see page 8 paragraphs 89-91 and page 13 paragraphs 141-142).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Husain.

Regarding claim 51, Husain discloses the claim limitations as discussed above. However, Husain fails to explicitly disclose:

accessing the source snapshot and if accessing fails, selecting an alternative snapshot from the selectable snapshots and repeating accessing the alternative snapshots.

Official Notice is taken to have data, such as the snapshots, stored in multiple locations such that if accessing to one fails, another snapshot can be retrieved from another location.

It would have been obvious to one of ordinary skill in the art at the time of invention was made to have the snapshots stored in multiple locations such that if accessing to one fails, another snapshot can be retrieved from another location, thus indicating accessing the source snapshot and if the accessing fails, selecting an alternative snapshot from the selectable snapshots and repeating accessing the alternative snapshots. A person of ordinary skill in the art would have been motivated to combine the teachings because Husain is concerned with

retrieving snapshots to restore a computer blade (see page 13 paragraph 141) and having the snapshots stored in multiple locations would enable the retrieval of snapshots if the first location is not accessible.

. Regarding claim 62, Husain discloses the claim limitations as discussed above. However, Husain fails to explicitly disclose:

a snapshot accessing unit responsive to the snapshot selector, the snapshot accessing unit is configured to access the selected source snapshot and wherein the snapshot selector is further configured to select an alternative source snapshot from the selectable snapshots upon failure of the snapshot accessing unit to access the selected source snapshot.

Official Notice is taken to have data, such as the snapshots, stored in multiple locations such that if accessing to one fails, another snapshot can be retrieved from another location.

It would have been obvious to one of ordinary skill in the art at the time of invention was made to have the snapshots stored in multiple locations such that if accessing to one fails, another snapshot can be retrieved from another location, thus indicating a snapshot accessing unit responsive to the snapshot selector, the snapshot accessing unit is configured to access the selected source snapshot and wherein the snapshot selector is further configured to select an alternative source snapshot from the selectable snapshots upon failure of the snapshot accessing unit to access the selected source snapshot.. A person of ordinary skill in the art would have been motivated to combine the teachings because Husain is concerned with retrieving snapshots to restore a computer blade (see page 13 paragraph 141) and having the snapshots stored in multiple locations would enable the retrieval of snapshots if the first location is not accessible.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emerson C. Puente whose telephone number is 571-272-3652. The examiner can normally be reached on 9-6 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Emerson C Puente/  
Primary Examiner, Art Unit 2113